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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	
	)	Chapter 11
Calpine Corporation, <u>et al.</u> ,	)	
	)	Case No. 05-60200 (BRL)
Debtors.	)	Jointly Administered
	)	

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**DEBTORS' DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL  
AND STATEMENT OF ISSUES TO BE PRESENTED**

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Calpine Corporation ("Calpine")<sup>1</sup> and its affiliated debtors and debtors in possession (the "Debtors"), hereby submit, pursuant to Federal Rule of Bankruptcy Procedure 8006, the following designation of items to be included in the record on appeal and statement of issues to be presented on appeal to the United States District Court for the Southern District of New York of the following Orders of this Court:

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning provided in the Debtors' Motion For Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on January 26, 2007 [Docket No. 3481].

Memorandum Decision and Order Granting, in part, Debtors' Motion for an Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, entered March 5, 2007 [Docket No. 3875];<sup>2</sup> and

Order (I) Granting Debtors' Limited Objection to Claim Numbers 2664, 3275, 3393 Through 3421 (Inclusive), 3546 through 3554 (inclusive), 3586 through 3588 (inclusive), 3731, 4073, 5653 through 5730 (inclusive), 5791, and 5792; (II) Determining the Value of the CalGen Secured Debt Pursuant to Rule 3012 of the Federal Rules of Bankruptcy Procedure, and (III) Authorizing Repayment of CalGen Secured Debt, entered March 12, 2007 [Docket No. 3970].<sup>3</sup>

### **Designation of Record Items**

Pursuant to Rule 8006, the Debtors shall provide to the Clerk true and accurate copies of the items designated below:

1. Emergency Motion for (I) Interim Orders (A) Authorizing the Debtors to (1) Obtain Postpetition Secured Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), and 364(e), (2) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and (3) Provide Adequate Protection to Certain Prepetition Lenders Pursuant to 11 U.S.C. §§ 361, 362 and 363 and (B) Scheduling Final Hearing Pursuant to Fed. R. Bankr. P. 4001(b) and (c) and (II) Final Orders (A) Authorizing the Debtors to (1) Obtain Postpetition Secured Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), and 364(e), (2) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (3) Provide Adequate Protection to Certain Prepetition Lenders Pursuant to 11 U.S.C. §§ 361, 362 and 363, (3) Assume the Geysers Agreement Pursuant to 11 U.S.C. § 365(a) and Consummate the Transactions Contemplated Thereby Pursuant to § 363(b) and (4) Assume the Agnews Lease Documents Pursuant to 11 U.S.C. § 365(a), entered on December 20, 2005 [Docket No. 18].
2. Interim Order (I) Authorizing Debtors to Obtain Post-Petition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), and 364(e) And (II) Scheduling

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<sup>2</sup> See Debtors' Notice of Appeal of Memorandum Decision and Order Granting, in Part, Debtors' Motion for an Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on March 14, 2007 [Docket No. 4015].

<sup>3</sup> See Debtors' Notice of Appeal of Order (I) Granting Debtors' Limited Objection to Claim Numbers 2664, 3275, 3393 Through 3421 (Inclusive), 3546 Through 3554 (Inclusive), 3586 Through 3588 (Inclusive), 3731, 4073, 5653 Through 5730 (Inclusive), 5791, and 5792; (II) Determining the Value of the CalGen Secured Debt Pursuant to Rule 3012 of the Federal Rules of Bankruptcy Procedure, and (III) Authorizing Repayment of CalGen Secured Debt, filed on March 16, 2007 [Docket No. 4043].

- Final Hearing Pursuant to Bankruptcy Rules 4001(B) And (C), entered on December 20, 2005 [Docket No. 38].
3. Final Order Authorizing Debtors to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), and 364(e), entered on January 26, 2006 [Docket No. 635].
  4. Second Amended Final Order Authorizing Use of Cash Collateral and Granting Adequate Protection, entered on February 26, 2006 [Docket No. 881].
  5. Those proofs of claim filed on account of the CalGen Secured Debt, including, without limitation, claim numbers 2626 through 2665 (inclusive), 3275 through 3588 (inclusive), 3396, 3728, 3729, 3731, 4011, 4019 through 4021 (inclusive), 4073, 5653 through 5730 (inclusive), 5789 through 5792 (inclusive), and 6128 through 6130 (inclusive).
  6. In re Delphi Corp., No. 05-44481 (Bankr. S.D.N.Y. Jan. 5, 2007) [Docket No. 6461].
  7. In re Eagle Picher Holdings, Inc., No. 05-12601 (Bankr. S.D. Ohio Nov. 29, 2005) [Docket No. 1238].
  8. Order Authorizing Repayment of Principal of First Lien Debt, entered on May 10, 2006 [Docket No. 1542].
  9. Transcript of Hearing Held on May 10, 2006 re: Debtor's Motion to Pay First Lien Debt, entered on 5/10/06 [Docket No. 1725].
  10. Amended Agreed Order Modifying Cash Collateral Order to Effect Project Intercompany Loan Transfers, entered January 18, 2007 [Docket No. 3423].
  11. Debtors' Motion For Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on January 26, 2007 [Docket No. 3481].
  12. Objection of Beal Bank to Debtors' Motion For Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on February 16, 2007 [Docket No. 3689].
  13. Objection of Wilmington Trust Company as Collateral Agent to the Debtors' Motion For Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on February 16, 2007 [Docket No. 3690].
  14. Objection of Wilmington Trust Company as Administrative Agent to the Debtors' Motion For Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing

- to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on February 16, 2007 [Docket No. 3691].
15. Objection of Wilmington Trust FSB as Indenture Trustee to the Debtors' Motion For Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on February 16, 2007 [Docket No. 3692].
  16. Response of HSBC Bank USA, National Association, as Indenture Trustee, (A) In Opposition to Debtors' Motion For Approval of Refinancing, (B) In Opposition to Debtors' Limited Objection to Indenture Trustee's Claim on behalf of Second Lien Noteholders, and (C) in Support of Indenture Trustee's Cross-Motion for Allowance of Claims, filed on February 16, 2007 [Docket No. 3694].
  17. Affidavit of Jason J. Jack in Support of Response of HSBC Bank USA, National Association, as Indenture Trustee, (A) in Opposition to Debtors' Motion for Approval of Refinancing, (B) in Opposition to Debtors' Limited Objection to Indenture Trustee's Claim on Behalf of Second Lien Noteholders, and (C) in Support of Indenture Trustee's Cross-Motion for Allowance of Claims, filed on February 16, 2007 [Docket No. 3695].
  18. Response of Bank of New York, as Administrative Agent, (A) In Opposition to Debtors' Motion For Approval of Refinancing, (B) In Opposition to Debtors' Limited Objection to Administrative Agent's Claim on behalf of Second Lien Lenders, and (C) in Support of Administrative Agent's Cross-Motion for Allowance of Claims, filed on February 16, 2007 [Docket No. 3698].
  19. Limited Objection of the Bank of Nova Scotia to Debtors' Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on February 16, 2007 [Docket No. 3699].
  20. Qualified Statement of the Official Committee of Unsecured Creditors of Calpine Corporation, et al. in Support of the Debtors' Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on February 16, 2007 [Docket No. 3700].
  21. Statement of the Official Committee of Equity Security Holders in Support of the Debtors' Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on February 16, 2007 [Docket No. 3701].

22. Objection of Unofficial Committee of Second Lien Debtholders to Debtors' Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on February 16, 2007 [Docket No. 3707].
23. Manufacturers & Traders Trust Company's (A) Objection to Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (i) Refinance Existing Postpetition Financing and (ii) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims and (B) Response to Debtors Seventh Omnibus Objection to Proofs of Claim, filed on February 16, 2007 [Docket No. 3711].
24. Memorandum of Law of Manufacturers & Traders Trust Company in Support of (A) Objection to Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (i) Refinance Existing Postpetition Financing and (ii) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims and (B) Response to Debtors' Seventh Omnibus Objection to Proofs of Claim, filed on February 16, 2007 [Docket No. 3713].
25. Amended Affidavit of Christopher J. Kearns in Support of (A) Objection of Manufacturers & Traders Trust Company to Debtors' Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (i) Refinance Existing Postpetition Financing and (ii) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims and (B) Response to Debtors' Seventh Omnibus Objection to Proofs of Claim, filed February 22, 2007 [Docket No. 3747].
26. Affidavit of Jason J. Jack in Support of Response of the Bank of New York, as Administrative Agent, (A) in Opposition to Debtors' Motion for Approval of Refinancing, (B) in Opposition to Debtors' Limited Objection to Administrative Agent's Claim on Behalf of Second Lien Lenders, and (C) in Support of Administrative Agent's Cross-Motion for Allowance of Claims, filed February 22, 2007 [Docket No. 3749].
27. Supplemental Affidavit of Jason J. Jack in Support of Response of HSBC Bank USA, National Association, as Indenture Trustee, (A) in Opposition to Debtors' Motion for Approval of Refinancing, (B) in Opposition to Debtors' Limited Objection to Indenture Trustee's Claim on Behalf of Second Lien Noteholders, and (C) in Support of Indenture Trustee's Cross-Motion for Allowance of Claims, filed February 22, 2007 [Docket No. 3750].
28. Ex Parte Motion of (I) Wilmington Trust Company as Collateral Agent; (II) Wilmington Trust Company as Administrative Agent; and, (III) Wilmington Trust FSB as Indenture Trustee Pursuant to 11 U.S.C. § 107(b) and Bankruptcy Rule 9018 for Authorization to File Under Seal the Affidavits of Anders Maxwell and Stephen Darr in Support of (I) Wilmington Trust Company as Collateral Agent; (II) Wilmington Trust Company as Administrative Agent; and, (III) Wilmington Trust FSB as Indenture Trustee's Individual

- Objections to the Debtors' Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (i) Refinance Existing Postpetition Financing and (ii) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on February 23, 2007 [Docket No. 3753].
29. Debtors' Consolidated Reply to Objections to Debtors' Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed February 23, 2007 [Docket No. 3763].
  30. Omnibus Reply to Objections to the Debtors' Refinancing Motion, filed on February 23, 2007 [Docket No. 3765].
  31. Surreply of HSBC Bank USA, National Association, as Indenture Trustee and the Bank of New York, as Administrative Agent, (A) in Opposition to Debtors' Motion for Approval of Refinancing, (B) in Opposition to Debtors' Limited Objection to Indenture Trustee's and Administrative Agent's Claims on Behalf of Second Lien Noteholders and Second Lien Lenders, and (C) in Support of Indenture Trustee's and Administrative Agent's Cross-Motion for Allowance of Claims, filed February 26, 2007 [Docket No. 3786].
  32. Manufacturers & Traders Company's Sur-Reply to the Debtors' Consolidated Reply to (A) Objections to Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (i) Refinance Existing Postpetition Financing and (ii) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims and (B) Response to Debtors' Seventh Omnibus Objection to Proofs of Claim, filed February 27, 2007 [Docket No. 3792].
  33. Surreply of Wilmington Trust Company as Administrative Agent and Wilmington Trust FSB as Indenture Trustee to the Debtors' Consolidated Reply to Objections to Debtors' Motion for Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing and (B) Repay the Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed February 27, 2007 [Docket No. 3793].
  34. Memorandum Decision and Order Granting, in Part, Debtors' Motion for an Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, entered March 5, 2007 [Docket No. 3875].
  35. Transcript of Hearing Held on February 27, 2007 re: Hearing Pursuant to Kirkland and Ellis LLP Notice of Agenda of Matters Scheduled for Hearing, entered on March 5, 2007 [Docket No. 3883].



36. All exhibits introduced into evidence at the February 27, 2007 hearing on the Debtors' Motion For Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, and all other documents the parties agreed were admissible and part of the record as stated in the transcript for the February 27, 2007 hearing on the Debtors' Motion, including those documents previously filed under seal with the Bankruptcy Court.
37. Order (I) Granting Debtors' Limited Objection to Claim Numbers 2664, 3275, 3393 Through 3421 (Inclusive), 3546 Through 3554 (Inclusive), 3586 Through 3588 (Inclusive), 3731, 4073, 5653 Through 5730 (Inclusive), 5791, and 5792; (II) Determining the Value of the CalGen Secured Debt Pursuant to Rule 3012 of the Federal Rules of Bankruptcy Procedure; and (III) Authorizing Repayment of CalGen Secured Debt, entered March 12, 2007 [Docket No. 3970].
38. Order Authorizing Debtors to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 364(e), entered on March 12, 2007 [Docket No. 3972].
39. Debtors' Notice of Appeal of Memorandum Decision and Order Granting, in Part, Debtors' Motion for an Order (I) Authorizing Debtors to Obtain Replacement Postpetition Financing to (A) Refinance Existing Postpetition Financing and (B) Repay Prepetition Debt; (II) Allowing Debtors' Limited Objection to Claims; and (III) Determining Value of Secured Claims, filed on March 14, 2007 [Docket No. 4015].
40. Debtors' Notice of Appeal of Order (I) Granting Debtors' Limited Objection to Claim Numbers 2664, 3275, 3393 Through 3421 (Inclusive), 3546 Through 3554 (Inclusive), 3586 Through 3588 (Inclusive), 3731, 4073, 5653 Through 5730 (Inclusive), 5791, and 5792; (II) Determining the Value of the CalGen Secured Debt Pursuant to Rule 3012 of the Federal Rules of Bankruptcy Procedure, and (III) Authorizing Repayment of CalGen Secured Debt, filed on March 16, 2007 [Docket No. 4043].

#### **Statement of Issues To Be Presented on Appeal**

Whether the Bankruptcy Court erred in the findings and rulings set forth in the "Damages" section of the Memorandum Decision and Order (at pp. 10-11).

Dated: March 26, 2007  
New York, New York

Respectfully submitted,

/s/ Richard M. Cieri

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